

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-4653**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATTI ANN JONES,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry M. Herlong, Jr., District Judge. (CR-02-1065)

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Submitted: March 26, 2004

Decided: April 15, 2004

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Before WIDENER, MOTZ, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Gordon McBride, Hartsville, South Carolina, for Appellant. James Strom Thurmond, Jr., United States Attorney, Columbia, South Carolina; Kevin Frank McDonald, OFFICE OF THE UNITED STATES ATTORNEY, Greenville, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Patti Ann Jones appeals her conviction and sentence following her guilty plea to one count of marriage fraud, in violation of 18 U.S.C. § 1325(c) (2000), and one count of conspiracy to commit marriage fraud, in violation of 18 U.S.C. § 371 (2000). Counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), in which he states that there are no meritorious issues for appeal. Although notified of her right to submit a pro se supplemental brief, Jones has not done so.

Counsel presents for review the district court's failure to depart downward pursuant to U.S. Sentencing Guidelines Manual § 5K2.20, p.s. (2001), based on Jones' family ties and responsibilities and her aberrant behavior. This court lacks jurisdiction to review the district court's refusal to depart downward unless that refusal is based on the court's mistaken belief that it lacked power to depart. United States v. Edwards, 188 F.3d 230, 238 (4th Cir. 1999). The record shows that the district court knew that it had the authority to depart but concluded that such a departure was not warranted. Therefore, this issue is not reviewable. United States v. Matthews, 209 F.3d 338, 352-53 (4th Cir. 2000).

In accordance with Anders, we have reviewed the entire record in this case and have found no meritorious issues for appeal. We therefore affirm Jones' conviction and sentence. This court requires that counsel inform his client, in writing, of her

right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED